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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Matter of the
ESTATE OF SHARON M. BRACKEN,
CAROL B. CLEMENCY, LAURA B. CLOUGH and JOHN L.
BRACKEN, Personal Representatives of the Estate of Sharon M. Bracken,
Appellants,
v.
STATE OF WASHINGTON, DEPARTMENT OF REVENUE,
Respondent.

FILED
SUPREME COURT
STATE OF WASHINGTON
2011 APR 27 A 9:58
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BRIEF OF *AMICUS CURIAE*
ESTATE OF BARBARA HAGYARD MESDAG

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ORIGINAL

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I. INTRODUCTION

Estate tax can be complicated, but one simple rule is inviolable: the State cannot retroactively impose a tax on a decedent's estate when that tax did not exist at the time of the decedent's death. The Washington State Department of Revenue ("DOR") is violating this rule by attempting to impose a new Washington estate and transfer tax adopted in 2005 (the "2005 Washington Estate Tax") on the estates of individuals who died prior to the adoption of that tax. As with its treatment of the Appellants in this case (the Bracken and Nelson estates), DOR has applied the 2005 Washington Estate Tax to property held in an irrevocable "Qualified Terminable Interest Property" or "QTIP" trust created in 2002 by the estate of Joseph Mesdag for the lifetime benefit of Joseph's surviving spouse, Barbara Mesdag ("Mesdag Trust"). DOR has now attempted to tax the remaining property of the Mesdag Trust as part of Barbara's estate upon her death. The estate of Barbara Mesdag ("Mesdag Estate") paid under protest the 2005 Washington Estate Tax that DOR claims is due, and it has sued for a refund.

When the Legislature enacted the 2005 Washington Estate Tax, it intended to enact a new tax that applied prospectively only, to the estates of individuals dying on or after May 17, 2005. DOR's application of the 2005 Washington Estate Tax to estates such as the Bracken, Nelson, and

Mesdag Estates violates both the plain language of the statute and the legislative intent that underlies it. DOR's attempted imposition of the 2005 Washington Estate Tax on property held in QTIP trusts created before May 17, 2005, such as the Mesdag Trust, should be invalidated, and in cases where the tax already has been paid, refunds should be ordered.

II. IDENTITY & INTEREST OF *AMICUS CURIAE*

DOR's effort to retroactively impose the 2005 Washington Estate Tax on the estates of individuals who died before May 17, 2005 affects estates other than the parties to this appeal. The Mesdag Estate is one such estate. The Mesdag Trust was created in 2002, when Joseph Mesdag died. A life interest was granted to Joseph's surviving wife, Barbara Mesdag, with the remainder interest granted to some of Joseph's relatives. The Mesdag Trust was irrevocable when it was created, and the interests of the remainder beneficiaries were vested at the time of creation. Barbara Mesdag died in 2007. In December 2008, DOR notified the Estate of Barbara Mesdag that Washington estate tax was due on property remaining in the Mesdag Trust, and interest would continue to accrue. *See Osborne v. Dep't of Revenue*, Thurston Cnty. Sup. Ct. Case No. 10-2-00929-6 ("Thurston County Case"), Dkt. No. 11 at 2. Despite this notification, DOR refused to file Findings against the estate pursuant to

RCW 83.100.150 until it first resolved the issue of the applicability of the 2005 Washington Estate Tax to QTIP trusts created before May 17, 2005, in the pending cases with the Bracken and Nelson estates. *Id.* at 7-8.

The Mesdag Estate filed a petition challenging the application of the 2005 Washington Estate Tax to the Mesdag Trust. This petition was dismissed on procedural grounds, because DOR had not filed Findings. *Id.* at 8. The Mesdag Estate then paid the more than \$3.2 million in taxes DOR claimed was due and filed a refund action in Thurston County Superior Court. *Id.* at 9. The Mesdag Estate has a substantial interest in ensuring that DOR's retroactive imposition of the 2005 Washington Estate Tax is invalidated and that refunds are ordered.

III. ISSUES OF INTEREST TO *AMICUS CURIAE*

A. Did the 2005 Washington Estate Tax create a new, stand-alone Washington estate tax that applies prospectively only? **Answer: Yes.**

B. Did the Legislature intend that the 2005 Washington Estate Tax apply to property held in QTIP trusts created before May 17, 2005?

Answer: No.

IV. STATEMENT OF THE CASE

A. Washington Adopts a New Estate and Transfer Tax in 2005.

From 1981 until 2005, the State of Washington imposed only a "pickup" estate tax, by which its "estate tax [was] received not as a

separate tax but through a tax credit established by the federal code.”

Estate of Hemphill v. Dep’t of Revenue, 153 Wn.2d 544, 547, 105 P.3d 391 (2005). Thus, prior to 2005, the Washington estate tax was dictated by the amount of the available federal credit for state death taxes and did “not creat[e] any additional tax burden on [any] estate[s].” *Id.* at 547-48.

In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act (“EGTRRA”). The EGTRRA phased out the federal estate tax credit for state death taxes, resulting in the complete nullification of the state death tax credit by 2005. *See* P.L. 107-16, § 531.

Based on the EGTRRA and the phasing out of the federal credit for state death taxes, in *Hemphill* the personal representatives of multiple estates challenged the validity of DOR’s continued collection of the Washington pickup estate tax. 153 Wn.2d at 546-47. DOR argued in *Hemphill* that, because the Washington pickup tax, as amended, specifically “impose[d] an estate tax equal to the federal credit as of January 1, 2001,” DOR could continue to collect the pickup tax despite the later phasing out of that credit. *Id.* at 549. This Court rejected DOR’s interpretation. The Court determined that “[a]ny amount of a state estate tax not fully absorbed by a current federal credit is an invalid independent tax.” *Id.* at 552. The Court invalidated DOR’s continued collection of the Washington pickup estate tax based on the amount of the 2001 federal

credit for state death taxes and ordered a refund of estate taxes wrongfully collected by DOR since January 1, 2002. *Id.*

A few months later, the Washington Legislature “address[ed] the adverse fiscal impact of the *Hemphill* decision and provide[d] funding for education by creating a stand-alone state estate tax.” Laws of 2005, ch. 516, § 1, attached hereto as Exhibit A. The Legislature enacted the 2005 Washington Estate Tax, thereby creating an estate tax that is administered independently of federal estate taxation. *See generally* Ex. A. The 2005 Washington Estate Tax is “imposed on every transfer of property located in Washington.” Ex. A, § 3.

B. Federal Law Allows for Marital Deductions and Deferred Taxation of “QTIP” Property.

Under federal law, the value of any interest in property that passes to a surviving spouse is deducted from a decedent’s estate for purposes of taxation. This is called a “marital deduction.” *See* 26 U.S.C. § 2056(a). Thus, a decedent can transfer property to a spouse without imposition of federal estate taxation.

Related to the marital deduction, but slightly more complicated, is the treatment of “Qualified Terminable Interest Property” or “QTIP” under federal law. An estate can make a federal tax election (a “QTIP election”) to qualify certain property for the marital deduction even though

it is not actually transferred to the surviving spouse. QTIP is property that typically passes to a trust established by the decedent, under which the surviving spouse must receive all of the income from the property or its proceeds for life, while the remainder ("QTIP Remainder") passes at the surviving spouse's death to one or more beneficiaries designated by the first-dying spouse. *See* 26 U.S.C. §§ 2056(b)(7)(B)(i), (ii), (v). Any property that is elected for treatment as QTIP is "treated as passing to the surviving spouse" for purposes of federal estate taxation. 26 U.S.C. § 2056(b)(7)(A). Accordingly, any eventual QTIP Remainder is subject to federal estate taxation only at the time the surviving spouse dies. By contrast, if no actual QTIP election is made for the trust property, the property is subject to tax at the death of the first spouse (when the trust is established), and not at the death of the surviving spouse.

Thus, with a QTIP election, a first-dying spouse can pass a life estate interest to a surviving spouse without federal estate taxation, and at the same time defer federal estate taxation of the QTIP Remainder until the remainder actually passes to one or more third-party beneficiaries upon the death of the surviving spouse. During the surviving spouse's lifetime, he or she must receive at least all of the annual income from the QTIP. If the value of the entire QTIP is exhausted prior to the surviving spouse's death, the property avoids federal estate taxation altogether, in accordance

with the purposes of the marital deduction. If the QTIP is not exhausted, whatever remains is subject to federal estate taxation. In this way, Congress has allowed for "a legal fiction that treats QTIP Property as passing in its entirety to the surviving spouse," and the use of this legal fiction promotes the purposes of the marital deduction, facilitates estate planning, and provides more choices for taxpayers. Dana R. Irwin, *Removing the Scaffolding: The QTIP Provisions and the Ownership Fiction*, 84 NEB. L. REV. 571, 573 (2005).

C. Washington Allows for QTIP Elections Only After May 2005.

The Washington pickup estate tax in place prior to 2005 did not provide for QTIP elections because, as discussed in Section IV(A), *supra*, that tax was based entirely on the state death tax credit established by federal law. *See, e.g.*, former ch. 83.100 RCW (2004); Laws of 1981, ch. 7. When the 2005 Washington Estate Tax took effect on May 17, 2005, it included a new section providing for QTIP elections for the purposes of that Tax as follows:

A new section is added to chapter 83.100 RCW to read as follows:

(1) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the Internal Revenue Code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the Internal Revenue Code,

for the purpose of determining the amount of tax due under this chapter.

Ex. A, § 13 (codified at RCW 83.100.047) (emphasis added).

Thus, under the 2005 Washington Estate Tax, a first-dying spouse now can elect QTIP treatment for purposes of state estate taxation, and defer the independent state taxation of the QTIP Remainder until the death of the surviving spouse. This independent state treatment of QTIP, along with all other provisions of the 2005 Washington Estate Tax, applies “prospectively only and not retroactively,” and “only to estates of decedents dying on or after [May 17, 2005].” Ex. A, § 20. In fact, by allowing a separate Washington election, the statute specifically contemplates that an estate could have property as to which a federal QTIP election had been made but no Washington QTIP election had been made.

V. ARGUMENT

DOR may not expand the 2005 Washington Estate Tax beyond its intended scope. DOR is attempting to tax estate transfers that predate the enactment of Washington’s new tax, ignoring both the Legislature’s direction that the tax is to be applied prospectively only, and that it must be interpreted in favor of the taxpayer.

The 2005 Washington Estate Tax is a new, stand-alone tax. It does not apply to the estates of individuals who died prior to its enactment. Nor

does it apply to QTIP trusts created by those estates. The plain language and the legislative history of the 2005 Washington Estate Tax confirm that the Legislature did not intend to impose the Tax on QTIP trusts created before May 17, 2005. Accordingly, DOR's efforts to impose the 2005 Washington Estate Tax on these QTIP trusts should be invalidated and, where DOR already has collected this Tax, refunds should be ordered.

A. Standard of Review.

DOR has argued for an expansive interpretation of the 2005 Washington Estate Tax, ignoring that "a tax statute must be construed most strongly against the taxing power and in favor of the taxpayer." *Lamtec Corp. v. Dep't of Revenue*, 170 Wn.2d 838, 842-43, 246 P.3d 788 (2011) (internal quotations omitted); *see also Hemphill*, 153 Wn.2d at 552. This canon of statutory interpretation ensures responsible application of the power of taxation, in accordance with Washington's constitutional requirement that "every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." Const. art. VII, § 5. DOR simply has not met its burden to justify its expansive application of the 2005 Washington Estate Tax.

This Court's review of a challenge to the collection of a tax is *de novo*, and the goal of interpreting statutory language in such cases "is to carry out the intent of the Legislature." *Simpson Investment Co. v. Dep't*

of Revenue, 141 Wn.2d 139, 148, 3 P.3d 741 (2000). Further, the Legislature is “presumed to have intended a meaning consistent with the constitutionality of its enactment.” *State ex rel. Dawes v. Washington State Highway Comm’n*, 63 Wn.2d 34, 38, 385 P.2d 376 (1963). This Court should consider the legislative history underlying the 2005 Washington Estate Tax to determine whether the Legislature intended to incorporate preexisting QTIP trusts into the scope of Washington’s new and forward-looking estate tax. *See Simpson*, 141 Wn.2d at 158 (“Consideration of legislative history is a legitimate method of ascertaining legislative intent.”). DOR cannot expand the application of the 2005 Washington Estate Tax without support in the statutory language or legislative history. In the absence of such support, DOR’s imposition of the 2005 Washington Estate Tax on QTIP trusts created before the effective date of the Tax must be invalidated.

B. The Washington Estate and Transfer Tax Act Created an Entirely New Tax.

In enacting the 2005 Washington Estate Tax, the Washington Legislature created a new and stand-alone estate tax. The Tax was passed during the 2005 legislative session as Engrossed Senate Bill 6096. The Final Bill Report explained that “[a] pick-up tax is *not an additional tax* on the estate but merely shifts revenues from the federal government to the

state,” and then declared “[a]n intent to *create* a stand-alone state estate tax” Final Bill Rep. ESB 6069, at 1, 2 (2005), attached hereto as Exhibit B (emphases added). The bill itself, as passed, declared that “[t]he legislature intend[ed] to . . . *creat[e]* a stand-alone state estate tax,” rather than to amend or continue the pickup tax. Ex. A, § 1 (emphasis added). Further, in its Fiscal Note to the Legislature, DOR acknowledged that “[t]his bill *creates* a stand-alone estate tax” Department of Revenue Fiscal Note, 6096 E SB, at 4, attached hereto as Exhibit C (emphasis added). The Legislature expressed no intent to amend or resurrect Washington’s pickup tax. The Legislature also clarified that the new stand-alone estate tax “applies *prospectively only* and not retroactively,” and applies “only to estates of decedents dying on or after [May 17, 2005].” Ex. A at 19, § 20 (emphasis added). The Legislature thus intended to create an entirely new and completely forward-looking Washington estate tax.

The 2005 Washington Estate Tax is very unlike Washington’s prior pickup tax. First, the 2005 Washington Estate Tax is levied independently of any federal taxation. It applies regardless of whether federal tax is due – a far cry from “not creating any additional tax burden on the estate.” *Hemphill*, 153 Wn.2d at 548. Second, the rates of state estate taxation now are set by the Legislature, not the federal government.

See Ex. A, § 3 (codified at RCW 83.100.040)) (table of state estate taxation rates). Third, the rate of taxation under the 2005 Washington Estate Tax is substantially greater than the prior rates under the federal credit for state death taxes set by the federal code.

DOR argues for form over substance by asserting that Washington's new estate tax is merely a statutory amendment of "the manner in which the tax is computed – changing from a pickup tax calculation to a stand-alone calculation," and that a statutory amendment cannot "equate to the repeal and replacement of [an old] tax with a 'new' tax." *See Estate of Sharon M. Bracken*, Case No. 84114-4, Br. of Resp't at 37-38. DOR seeks to contrast the 1981 "repeal" of the former Washington inheritance tax – which created a new tax, as DOR concedes – with the 2005 "amend[ments]" to chapter 83.100 RCW. *Id.* But DOR ignores the substantial similarity between these two legislative acts. In 1981, Washington voters repealed, by Initiative Measure No. 402, the then-existing stand-alone tax and replaced it with the pickup tax in effect until 2005. *See* Laws of 1981, 2d Ex. Sess., ch. 7, § 83.100.030 ("A tax in an amount equal to the federal credit is imposed on the transfer of the net estate of every resident.") (replacing former RCW.83.04.010 (1979) (providing for a stand-alone tax on all property passing "by will or by the

statutes of inheritance”)).¹ As was the case with the voters’ 1981 decision to replace the stand-alone tax with a pickup tax, the Legislature’s 2005 decision to replace the pickup tax with a stand-alone tax also created a new tax. Whether a tax was created by voters’ initiative or statutory amendment is irrelevant. Whether the change is from stand-alone tax to pickup tax, or from pickup tax to stand-alone tax, is equally irrelevant. In substance, the pickup tax and the stand-alone tax are fundamentally different taxes, and the 2005 Washington Estate Tax is a new tax.

Additionally, this Court’s decision in *Hemphill* confirms that the Legislature created a new tax when it enacted the 2005 Washington Estate Tax. In support of its contention that it could continue to collect the Washington pickup tax despite the phasing out of the federal credit, DOR argued that the Washington Legislature actually had intended to decouple the Washington estate tax from that federal credit. *Hemphill*, 153 Wn.2d at 551. This Court determined that there was “no indication of this in the legislative history, and the Department ha[d] not identified where the legislature changed the character of the tax and created an independently operating Washington estate tax.” *Id.* The Court held that “[u]ntil or

¹ Initiative Measure No. 402 read: “Shall inheritance and gift taxes be abolished, and state death taxes be restricted to the federal estate tax credit allowed?” *Hemphill*, 153 Wn.2d at 547, n.4 (quoting *Official Voters Pamphlet, General Election 6* (Nov. 6, 1981)).

unless the legislature revises RCW 83.100.030 to specifically and expressly *create* a stand alone estate or inheritance tax, RCW 83.100.030 remains as a pick-up tax, in which all state estate tax due must be fully reimbursed as a current federal credit.” *Id.* (emphasis added). After this Court’s decision in *Hemphill* was announced, the Legislature followed the Court’s direction, revised chapter 83.100 RCW, and created the new stand-alone 2005 Washington Estate Tax.

C. The Legislature Did Not Intend to Impose the 2005 Washington Estate Tax on Preexisting QTIP Trusts.

The Legislature did not intend to impose the 2005 Washington Estate Tax on QTIP trusts created before May 17, 2005, the effective date of that statute. The text of the 2005 Washington Estate Tax expressly limits the scope of the new tax to *prospective* applications only and to estates of decedents dying after May 17, 2005. Ex. A, § 20. By that date, the trusts involved in the Bracken, Nelson, Mesdag and similar estates were irrevocable and the transfers had occurred from the estates of the first-dying spouse to those trusts. There is no evidence that the Washington Legislature, in enacting the 2005 Washington Estate Tax, intended to apply that Tax retroactively to irrevocable trusts created before May 17, 2005. DOR presents no evidence of such an intent, and consideration of this particular issue – or even treatment of QTIP

generally – was entirely absent from the floor debates in both the Senate and the House leading up to the enactment of the 2005 Washington Estate Tax.²

The text of the 2005 Washington Estate Tax also limits its scope to *subsequent transfers* of property. Ex. A, §§ 3, 20. The property interests of QTIP trust remainder beneficiaries vest at the time the QTIP trust is created, and thus the taxable transfer of property actually occurs at the time the QTIP trust is created, not at the death of the surviving spouse. *See Van Stewart v. Townsend*, 176 Wash. 311, 322-23 (1934). For federal estate tax purposes, property held in a QTIP trust would be subject to the tax at the time the trust is created, except for the QTIP election made to defer the federal tax until the death of the surviving spouse. Congress allows for this election of deferred taxation based on what is “clearly a falsehood, treating a surviving spouse as owning QTIP Property outright when she owns nothing more than a life interest.” Irwin, 84 NEB. L. REV. at 586. This serves the limited purpose of “balancing the initial marital deduction with a later tax,” but using this legal fiction “for any other purpose [would] lead to the fiction’s danger: the inequitable results of holding a surviving spouse responsible for ownership of property with

² See generally Senate Floor Debate, Apr. 19, 2005, 7:30pm, available at <http://podcasts.tvw.org/200504/2005040165C.mp3> (last visited April 6, 2011); House Floor Debate, April 22, 2005, 3:30pm, available at <http://podcasts.tvw.org/200504/2005040170B.mp3> (last visited April 6, 2011).

respect to which she has no economic or property law rights.” *Id.* at 587, 589.

The 2005 Washington Estate Tax allows for the use of the same legal fiction in the application of that Tax, but only after a *separate* Washington QTIP election has been made. Ex. A, § 13 (codified at RCW 83.100.047)). Such an election became available only after the May 17, 2005, effective date of the 2005 Washington Estate Tax. *Id.* QTIP trusts created and QTIP elections made for federal taxation purposes before that date do not create a “transfer” by fiat at the death of the surviving spouse for purposes of imposing the 2005 Washington Estate Tax. Nothing in the plain language or the legislative history of the 2005 Washington Estate Tax supports the conclusion that the Legislature intended such an inequitable result.

D. DOR’s Expansive Interpretation of the 2005 Washington Estate Tax Leads to Absurd Results.

The estates affected by DOR’s efforts to retroactively impose the 2005 Washington Estate Tax on QTIP trusts will not improperly “avoid” Washington estate taxation as DOR suggests. *See Estate of Sharon M. Bracken*, Case No. 84114-4, Br. of Resp’t at 2. On the contrary, DOR’s expansive interpretation of the 2005 Washington Estate Tax leads to absurd results. For example, consider the following situation:

Husband and Wife are longtime California residents, but their only child lives in Washington. Wife dies in California in 2002. No Washington estate tax is paid or even contemplated because there is no connection between the Wife's estate and Washington. A significant portion of Wife's estate goes into an irrevocable trust for Husband's benefit during his lifetime as to which a federal QTIP election is made. The trustee is a California resident, and the trust holds cash and investment securities. Husband becomes ill in 2004 and moves to Washington so daughter can care for him. Husband dies in Washington in 2006.

Applying DOR's expansive interpretation of the 2005 Washington Estate Tax to these circumstances would subject all of Wife's QTIP Trust to Washington estate taxation at Husband's death. This is true even though no Washington QTIP election was made or even contemplated at the time of Wife's death in California in 2002. DOR would not have been entitled to impose any tax at Wife's death and, thus, it would not be deprived of any "lost" tax revenue at Husband's death. DOR begs the question by assuming that it is entitled to assess the tax, and arguing that it will be "deprived" of its entitlement otherwise.

Other than the location where the first spouse died, the scenario in the above example is identical to the circumstances presented by the Bracken, Nelson, and Mesdag Estates. In each case, an irrevocable trust was created before 2005, and the remainder interest was vested in third-party beneficiaries at the creation of the trust. Even if a fiction was employed for purposes of federal taxation and based upon a federal tax

election by the executors, no additional transfer occurred after 2005. The executors could not make or even contemplate a Washington QTIP election in any of these cases. Washington is not "deprived" of any revenue from this property, because only the state's then-existing pickup tax could be applied to it. The trust was not subject to Washington's stand-alone estate tax when the trust was created and the transfer of property occurred. Accordingly, DOR's expansive interpretation of the 2005 Washington Estate Tax should be rejected.

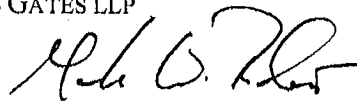
VI. CONCLUSION

For the foregoing reasons, DOR's efforts to impose the 2005 Washington Estate Tax on QTIP trusts created before May 17, 2005 should be invalidated and, where DOR already has collected this Tax, refunds should be ordered.

RESPECTFULLY SUBMITTED this 19th day of April, 2011.

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By



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Attorneys for *Amicus Curiae*

Estate of Barbara Hagyard Mesdag

84114-4

Exhibit A

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6096

Chapter 516, Laws of 2005

59th Legislature
2005 Regular Session

ESTATE TAX

EFFECTIVE DATE: 5/17/05

Passed by the Senate April 19, 2005
YEAS 25 NAYS 21

BRAD OWEN

President of the Senate

Passed by the House April 22, 2005
YEAS 50 NAYS 48

FRANK CHOPP

Speaker of the House of Representatives

Approved May 17, 2005.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6096** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 17, 2005 - 3:33 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6096

Passed Legislature - 2005 Regular Session

State of Washington

59th Legislature

2005 Regular Session

By Senators Poulsen, Fraser and Prentice; by request of Governor Gregoire

Read first time 03/24/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to generating new tax revenues to provide education
2 funding; amending RCW 83.100.020, 83.100.040, 83.100.050, 83.100.060,
3 83.100.070, 83.100.090, 83.100.110, 83.100.130, 83.100.140, 83.100.150,
4 83.100.210, and 83.100.010; adding new sections to chapter 83.100 RCW;
5 creating new sections; repealing RCW 83.100.030 and 83.100.045; and
6 declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature recognizes that on February
9 3, 2005, the Washington state supreme court decided in *Estate of*
10 *Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate
11 tax is tied to the current federal Internal Revenue Code. The
12 legislature finds that the revenue loss resulting from the *Hemphill*
13 decision will severely affect the legislature's ability to fund
14 programs vital to the peace, health, safety, and support of the
15 citizens of this state. The legislature intends to address the adverse
16 fiscal impact of the *Hemphill* decision and provide funding for
17 education by creating a stand-alone state estate tax.

1 **Sec. 2.** RCW 83.100.020 and 2001 c 320 s 15 are each amended to
2 read as follows:

3 As used in this chapter:

4 (1) "Decedent" means a deceased individual;

5 (2) "Department" means the department of revenue, the director of
6 that department, or any employee of the department exercising authority
7 lawfully delegated to him by the director;

8 (3) ~~(("Federal credit" means (a) for a transfer, the maximum amount~~
9 ~~of the credit for state taxes allowed by section 2011 of the Internal~~
10 ~~Revenue Code; and (b) for a generation skipping transfer, the maximum~~
11 ~~amount of the credit for state taxes allowed by section 2604 of the~~
12 ~~Internal Revenue Code;~~

13 ~~(4))~~ "Federal return" means any tax return required by chapter 11
14 ~~((or 13))~~ of the Internal Revenue Code;

15 ~~((5))~~ (4) "Federal tax" means ~~((a) for a transfer,))~~ a tax under
16 chapter 11 of the Internal Revenue Code; ~~((and (b) for a generation-~~
17 ~~skipping transfer, the tax under chapter 13 of the Internal Revenue~~
18 ~~Code;~~

19 ~~(6) "Generation skipping transfer" means a "generation skipping~~
20 ~~transfer" as defined and used in section 2611 of the Internal Revenue~~
21 ~~Code;~~

22 ~~(7))~~ (5) "Gross estate" means "gross estate" as defined and used
23 in section 2031 of the Internal Revenue Code;

24 ~~((8) "Nonresident" means a decedent who was domiciled outside~~
25 ~~Washington at his death;~~

26 ~~(9))~~ (6) "Person" means any individual, estate, trust, receiver,
27 cooperative association, club, corporation, company, firm, partnership,
28 joint venture, syndicate, or other entity and, to the extent permitted
29 by law, any federal, state, or other governmental unit or subdivision
30 or agency, department, or instrumentality thereof;

31 ~~((10))~~ (7) "Person required to file the federal return" means any
32 person required to file a return required by chapter 11 ~~((or 13))~~ of
33 the Internal Revenue Code, such as the personal representative of an
34 estate~~((; or a transferor, trustee, or beneficiary of a generation-~~
35 ~~skipping transfer; or a qualified heir with respect to qualified real~~
36 ~~property, as defined and used in section 2032A(c) of the Internal~~
37 ~~Revenue Code));~~

1 ~~((+11+))~~ (8) "Property" means ~~((a) for a transfer,~~) property
2 included in the gross estate~~((; and (b) for a generation-skipping~~
3 ~~transfer, all real and personal property subject to the federal tax))~~;

4 ~~((+12+))~~ (9) "Resident" means a decedent who was domiciled in
5 Washington at time of death;

6 ~~((+13+))~~ (10) "Taxpayer" means a person upon whom tax is imposed
7 under this chapter, including an estate or a person liable for tax
8 under RCW 83.100.120;

9 (11) "Transfer" means "transfer" as used in section 2001 of the
10 Internal Revenue Code~~((, or a disposition or cessation of qualified use~~
11 ~~as defined and used in section 2032A(e) of the Internal Revenue Code))~~.
12 However, "transfer" does not include a qualified heir disposing of an
13 interest in property qualifying for a deduction under section 4 of this
14 act or ceasing to use the property for farming purposes;

15 ~~((+14+))~~ "Trust" means "trust" under Washington law and any
16 arrangement described in section 2652 of the Internal Revenue Code; and

17 ~~(+15+))~~ (12) "Internal Revenue Code" means, for the purposes of this
18 chapter and RCW 83.110.010, the United States Internal Revenue Code of
19 1986, as amended or renumbered as of January 1, ~~((2001))~~ 2005;

20 (13) "Washington taxable estate" means the federal taxable estate,
21 less: (a) One million five hundred thousand dollars for decedents
22 dying before January 1, 2006; and (b) two million dollars for decedents
23 dying on or after January 1, 2006; and (c) the amount of any deduction
24 allowed under section 4 of this act; and

25 (14) "Federal taxable estate" means the taxable estate as
26 determined under chapter 11 of the Internal Revenue Code without regard
27 to: (a) The termination of the federal estate tax under section 2210
28 of the Internal Revenue Code or any other provision of law, and (b) the
29 deduction for state estate, inheritance, legacy, or succession taxes
30 allowable under section 2058 of the Internal Revenue Code.

31 **Sec. 3.** RCW 83.100.040 and 1988 c 64 s 4 are each amended to read
32 as follows:

33 (1) A tax in an amount computed as provided in this section is
34 imposed on every transfer of property located in Washington ~~((of every~~
35 ~~nonresident))~~. For the purposes of this section, any intangible
36 property owned by a resident is located in Washington.

(2) ~~((The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate.~~

~~(3) The transfer of the property of a nonresident is exempt from the tax imposed by this section to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled.))~~ (a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

If Washington Taxable		The amount of Tax Equals		Of Washington
				Taxable Estate Value
<u>Estate is at least</u>	<u>But Less Than</u>	<u>Initial Tax Amount</u>	<u>Plus Tax Rate %</u>	<u>Greater than</u>
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
Above \$9,000,000		\$1,440,000	19.00%	Above \$9,000,000

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under section 4 of this act shall be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the Internal Revenue Code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 83.100 RCW
2 to read as follows:

3 (1) For the purposes of determining the Washington taxable estate,
4 a deduction is allowed from the federal taxable estate for the value of
5 qualified real property and the value of any tangible personal property
6 used primarily for farming purposes conducted on the qualified real
7 property, reduced by any amounts allowable as a deduction in respect of
8 the qualified real property and tangible personal property under
9 section 2053(a)(4) of the Internal Revenue Code, if the decedent was at
10 the time of his or her death a citizen or resident of the United
11 States. For the purposes of determining the deduction amount, the
12 value of property is its value as used to determine the value of the
13 gross estate.

14 (2) Property shall be considered to have been acquired from or to
15 have passed from the decedent if:

16 (a) The property is so considered under section 1014(b) of the
17 Internal Revenue Code;

18 (b) The property is acquired by any person from the estate; or

19 (c) The property is acquired by any person from a trust, to the
20 extent the property is includible in the gross estate of the decedent.

21 (3) If the decedent and the decedent's surviving spouse at any time
22 held qualified real property as community property, the interest of the
23 surviving spouse in the property shall be taken into account under this
24 section to the extent necessary to provide a result under this section
25 with respect to the property which is consistent with the result which
26 would have obtained under this section if the property had not been
27 community property.

28 (4) In the case of any qualified woodland, the value of trees
29 growing on the woodland may be deducted if otherwise qualified under
30 this section.

31 (5) If property is qualified real property with respect to a
32 decedent, hereinafter in this subsection referred to as the "first
33 decedent," and the property was acquired from or passed from the first
34 decedent to the surviving spouse of the first decedent, active
35 management of the farm by the surviving spouse shall be treated as
36 material participation by the surviving spouse in the operation of the
37 farm.

1 (6) Property owned indirectly by the decedent may qualify for a
2 deduction under this section if owned through an interest in a
3 corporation, partnership, or trust as the terms corporation,
4 partnership, or trust are used in section 2032A(g) of the Internal
5 Revenue Code. In order to qualify for a deduction under this
6 subsection, the interest, in addition to meeting the other tests for
7 qualification under this section, must qualify under section 6166(b)(1)
8 of the Internal Revenue Code as an interest in a closely held business
9 on the date of the decedent's death and for sufficient other time,
10 combined with periods of direct ownership, to equal at least five years
11 of the eight-year period preceding the death.

12 (7)(a) If, on the date of the decedent's death, the requirements of
13 subsection (10)(f)(i)(C)(II) of this section with respect to the
14 decedent for any property are not met, and the decedent (i) was
15 receiving old age benefits under Title II of the social security act
16 for a continuous period ending on such date, or (ii) was disabled for
17 a continuous period ending on this date, then subsection
18 (10)(f)(i)(C)(II) of this section shall be applied with respect to the
19 property by substituting "the date on which the longer of such
20 continuous periods began" for "the date of the decedent's death" in
21 subsection (10)(f)(i)(C) of this section.

22 (b) For the purposes of (a) of this subsection, an individual shall
23 be disabled if the individual has a mental or physical impairment which
24 renders that individual unable to materially participate in the
25 operation of the farm.

26 (8) Property may be deducted under this section whether or not
27 special valuation is elected under section 2032A of the Internal
28 Revenue Code on the federal return.

29 (9)(a) In the case of any qualified replacement property, any
30 period during which there was ownership, qualified use, or material
31 participation with respect to the replaced property by the decedent or
32 any member of the decedent's family shall be treated as a period during
33 which there was ownership, use, or material participation, as the case
34 may be, with respect to the qualified replacement property.

35 (b) Subsection (9)(a) of this section shall not apply to the extent
36 that the fair market value of the qualified replacement property, as of
37 the date of its acquisition, exceeds the fair market value of the
38 replaced property, as of the date of its disposition.

1 (c) For the purposes of this subsection (9), the following
2 definitions apply:

3 (i) "Qualified replacement property" means any real property:

4 (A) Which is acquired in an exchange which qualifies under section
5 1031 of the Internal Revenue Code; or

6 (B) The acquisition of which results in the nonrecognition of gain
7 under section 1033 of the Internal Revenue Code.

8 The term "qualified replacement property" only includes property
9 which is used for the same qualified use as the replaced property was
10 being used before the exchange.

11 (ii) "Replaced property" means the property was:

12 (A) Transferred in the exchange which qualifies under section 1031
13 of the Internal Revenue Code; or

14 (B) Compulsorily or involuntarily converted within the meaning of
15 section 1033 of the Internal Revenue Code.

16 (10) For the purposes of this section, the following definitions
17 apply:

18 (a) "Active management" means the making of the management
19 decisions of a farm, other than the daily operating decisions.

20 (b) "Farm" includes stock, dairy, poultry, fruit, furbearing
21 animal, and truck farms; plantations; ranches; nurseries; ranges;
22 greenhouses or other similar structures used primarily for the raising
23 of agricultural or horticultural commodities; and orchards and
24 woodlands.

25 (c) "Farming purposes" means:

26 (i) Cultivating the soil or raising or harvesting any agricultural
27 or horticultural commodity, including the raising, shearing, feeding,
28 caring for, training, and management of animals on a farm;

29 (ii) Handling, drying, packing, grading, or storing on a farm any
30 agricultural or horticultural commodity in its unmanufactured state,
31 but only if the owner, tenant, or operator of the farm regularly
32 produces more than one-half of the commodity so treated; and

33 (iii)(A) The planting, cultivating, caring for, or cutting of
34 trees; or

35 (B) The preparation, other than milling, of trees for market.

36 (d) "Member of the family" means, with respect to any individual,
37 only:

38 (i) An ancestor of the individual;

1 (ii) The spouse of the individual;

2 (iii) A lineal descendant of the individual, of the individual's
3 spouse, or of a parent of the individual; or

4 (iv) The spouse of any lineal descendant described in (d)(iii) of
5 this subsection.

6 For the purposes of this subsection (10)(d), a legally adopted
7 child of an individual shall be treated as the child of such individual
8 by blood.

9 (e) "Qualified heir" means, with respect to any property, a member
10 of the decedent's family who acquired property, or to whom property
11 passed, from the decedent.

12 (f)(i) "Qualified real property" means real property which was
13 acquired from or passed from the decedent to a qualified heir of the
14 decedent and which, on the date of the decedent's death, was being used
15 for a qualified use by the decedent or a member of the decedent's
16 family, but only if:

17 (A) Fifty percent or more of the adjusted value of the gross estate
18 consists of the adjusted value of real or personal property which:

19 (I) On the date of the decedent's death, was being used for a
20 qualified use by the decedent or a member of the decedent's family; and

21 (II) Was acquired from or passed from the decedent to a qualified
22 heir of the decedent;

23 (B) Twenty-five percent or more of the adjusted value of the gross
24 estate consists of the adjusted value of real property which meets the
25 requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

26 (C) During the eight-year period ending on the date of the
27 decedent's death there have been periods aggregating five years or more
28 during which:

29 (I) The real property was owned by the decedent or a member of the
30 decedent's family and used for a qualified use by the decedent or a
31 member of the decedent's family; and

32 (II) There was material participation by the decedent or a member
33 of the decedent's family in the operation of the farm. For the
34 purposes of this subsection (f)(i)(C)(II), material participation shall
35 be determined in a manner similar to the manner used for purposes of
36 section 1402(a)(1) of the Internal Revenue Code.

37 (ii) For the purposes of this subsection, the term "adjusted value"
38 means:

1 (A) In the case of the gross estate, the value of the gross estate,
2 determined without regard to any special valuation under section 2032A
3 of the Internal Revenue Code, reduced by any amounts allowable as a
4 deduction under section 2053(a)(4) of the Internal Revenue Code; or

5 (B) In the case of any real or personal property, the value of the
6 property for purposes of chapter 11 of the Internal Revenue Code,
7 determined without regard to any special valuation under section 2032A
8 of the Internal Revenue Code, reduced by any amounts allowable as a
9 deduction in respect of such property under section 2053(a)(4) of the
10 Internal Revenue Code.

11 (g) "Qualified use" means the property is used as a farm for
12 farming purposes. In the case of real property which meets the
13 requirements of (f)(i)(C) of this subsection, residential buildings and
14 related improvements on the real property occupied on a regular basis
15 by the owner or lessee of the real property or by persons employed by
16 the owner or lessee for the purpose of operating or maintaining the
17 real property, and roads, buildings, and other structures and
18 improvements functionally related to the qualified use shall be treated
19 as real property devoted to the qualified use.

20 (h) "Qualified woodland" means any real property which:

21 (i) Is used in timber operations; and

22 (ii) Is an identifiable area of land such as an acre or other area
23 for which records are normally maintained in conducting timber
24 operations.

25 (i) "Timber operations" means:

26 (i) The planting, cultivating, caring for, or cutting of trees; or

27 (ii) The preparation, other than milling, of trees for market.

28 **Sec. 5.** RCW 83.100.050 and 1988 c 64 s 6 are each amended to read
29 as follows:

30 (1) (~~The~~) A Washington return must be filed if: (a) A federal
31 return is required to be filed; or (b) for decedents dying prior to
32 January 1, 2006, the gross estate exceeds one million five hundred
33 thousand dollars; or (c) for decedents dying on or after January 1,
34 2006, the gross estate exceeds two million dollars.

35 (2)(a) A person required to file (~~the~~) a federal return shall
36 file with the department on or before the date the federal return is

1 required to be filed, including any extension of time for filing ((the
2 federal return:

3 ~~((a)))~~ under subsection (4) of this section, a Washington return for
4 the tax due under this chapter((; and

5 ~~((b) A copy of the federal return.~~

6 ~~No Washington return need be filed if no federal return is~~
7 ~~required)).~~

8 ((b) If no federal return is required to be filed, a taxpayer shall
9 file with the department on or before the date a federal return would
10 have been required to be filed, including any extension of time for
11 filing under subsection (5) of this section, a Washington return for
12 the tax due under this chapter.

13 ((3) A Washington return delivered to the department by United
14 States mail shall be considered to have been received by the department
15 on the date of the United States postmark stamped on the cover in which
16 the return is mailed, if the postmark date is within the time allowed
17 for filing the Washington return, including extensions.

18 ((((2))) (4) In addition to the Washington return required to be
19 filed in subsection (2) of this section, a person, if required to file
20 a federal return, shall file with the department on or before the date
21 the federal return, is required to be filed a copy of the federal
22 return along with all supporting documentation. If the person required
23 to file the federal return has obtained an extension of time for filing
24 the federal return, the person shall file the Washington return within
25 the same time period and in the same manner as provided for the federal
26 return. A copy of the federal extension shall be filed with the
27 department on or before the date the Washington return is due, not
28 including any extension of time for filing, or within thirty days of
29 issuance, whichever is later.

30 ((5) A person who is required to file a Washington return under
31 subsection (2) of this section, but is not required to file a federal
32 return, may obtain an extension of time for filing the Washington
33 return as provided by rule of the department.

34 **Sec. 6.** RCW 83.100.060 and 1988 c 64 s 7 are each amended to read
35 as follows:

36 (1) The taxes imposed by this chapter shall be paid by the person
37 required to file ~~((the federal))~~ a Washington return on or before the

1 date the Washington return is required to be filed under RCW
2 83.100.050, not including any extension of time for filing. Payment
3 delivered to the department by United States mail shall be considered
4 to have been received by the department on the date of the United
5 States postmark stamped on the cover in which payment is mailed, if the
6 postmark date is within the time allowed for making the payment,
7 including any extensions.

8 (2) If the person (~~required to file the federal return~~) has
9 obtained an extension of time for payment of the federal tax or has
10 elected to pay such tax in installments, the person may elect to pay
11 the tax imposed by this chapter within the same time period and in the
12 same manner as provided for payment of the federal tax. A copy of the
13 federal extension shall be filed on or before the date the tax imposed
14 by this chapter is due, not including any extension of time for
15 payment, or within thirty days of issuance, whichever is later.

16 (3) A person who is required to file a Washington return under RCW
17 83.100.050, but is not required to file a federal return, may obtain an
18 extension of time for payment of the Washington tax or elect to pay
19 such tax in installments as provided by rule of the department.

20 (4) The periods of limitation in RCW 83.100.130 and section 14 of
21 this act shall extend an additional three years beyond the due date of
22 the last scheduled installment payment authorized under this section.

23 **Sec. 7.** RCW 83.100.070 and 2000 c 105 s 1 are each amended to read
24 as follows:

25 (1) For periods before January 2, 1997, any tax due under this
26 chapter which is not paid by the due date under RCW 83.100.060(1) shall
27 bear interest at the rate of twelve percent per annum from the date the
28 tax is due until the date of payment.

29 (2) Interest imposed under this section for periods after January
30 1, 1997, shall be computed at the rate as computed under RCW
31 82.32.050(2). The rate so computed shall be adjusted on the first day
32 of January of each year.

33 (3)(a) If the Washington return is not filed when due under RCW
34 83.100.050 and the person required to file the (~~federal~~) Washington
35 return under RCW 83.100.050 voluntarily (~~reports the filing and~~)
36 files (~~both~~) the (~~state and federal estate tax returns~~) Washington
37 return with the department before the department notifies the person in

1 writing that the department has determined that the person has not
2 filed a Washington return, no penalty is imposed on the person required
3 to file the ((federal)) Washington return.

4 (b) If the Washington return is not filed when due under RCW
5 83.100.050 and the person required to file the ((federal)) Washington
6 return under RCW 83.100.050 does not file a return with the department
7 before the department notifies the person in writing that the
8 department has determined that the person has not filed a ((state
9 ~~estate-tax~~)) Washington return, the person required to file the
10 ((federal)) Washington return shall pay, in addition to interest, a
11 penalty equal to five percent of the tax due for each month after the
12 date the return is due until filed. However, in no instance may the
13 penalty exceed the lesser of twenty-five percent of the tax due or one
14 thousand five hundred dollars.

15 (c) If the department finds that a return due under this chapter
16 has not been filed by the due date, and the delinquency was the result
17 of circumstances beyond the control of the responsible person, the
18 department shall waive or cancel any penalties imposed under this
19 chapter with respect to the filing of such a tax return. The
20 department shall adopt rules for the waiver or cancellation of the
21 penalties imposed by this section.

22 **Sec. 8.** RCW 83.100.090 and 1988 c 64 s 10 are each amended to read
23 as follows:

24 Notwithstanding the periods of limitation in section 14 of this act
25 and RCW 83.100.130:

26 (1) If the person required to file the ((federal)) Washington
27 return under RCW 83.100.050 files an amended federal return, that
28 person shall immediately file with the department an amended Washington
29 return with a copy of the amended federal return. If the amended
30 Washington return requires payment of an additional tax under this
31 chapter, the tax shall be paid in accordance with RCW 83.100.060 and
32 interest shall be paid in accordance with RCW 83.100.070.

33 (2) Upon any adjustment in, or final determination of, the amount
34 of federal tax due, the person required to file the ((federal))
35 Washington return under RCW 83.100.050 shall notify the department in
36 writing within ((sixty)) one hundred twenty days after the adjustment
37 or final determination. If the adjustment or final determination

1 requires payment of an additional tax under this chapter, the tax shall
2 be paid in accordance with RCW 83.100.060 and interest shall be paid in
3 accordance with RCW 83.100.070.

4 (3) If the department determines the amended Washington return,
5 adjustment, or final determination requires payment of an additional
6 tax under this chapter, the department may assess against the taxpayer
7 an additional amount found to be due within one year of receipt of the
8 amended Washington return or written notice as required by this
9 section, or at any time if no amended Washington return is filed or
10 notice is provided as required by this section. The execution of a
11 written waiver at the request of the department by the person required
12 to file the Washington return under RCW 83.100.050 may extend this
13 limitation. Interest shall be added to the amount of tax assessed by
14 the department in accordance with RCW 83.100.070. The department shall
15 notify the taxpayer by mail of the additional amount, and the
16 additional amount shall become due and shall be paid within thirty days
17 from the date of the notice, or within such further time as the
18 department may provide.

19 (4) If the department determines the amended Washington return,
20 adjustment, or final determination requires the refund of overpaid tax,
21 penalties, or interest under this chapter, the department shall refund
22 the amount of the overpayment with interest in accordance with RCW
23 83.100.130. The person required to file the Washington return under
24 RCW 83.100.050 shall provide the department with any additional
25 information or supporting documents necessary to determine if a refund
26 is due. The execution of a written waiver to extend the period for
27 assessment under subsection (3) of this section shall extend the time
28 for making a refund, if prior to the expiration of the waiver period an
29 application for refund of the taxes is made by the person required to
30 file the Washington return under RCW 83.100.050, or the department
31 discovers a refund is due.

32 **Sec. 9.** RCW 83.100.110 and 1988 c 64 s 11 are each amended to read
33 as follows:

34 (1) Unless any tax due under this chapter is sooner paid in full,
35 it shall be a lien upon the property subject to the tax for a period of
36 ten years from the date of the transfer (~~or the generation-skipping~~
37 ~~transfer)), except that any part of the property which is used for the~~

1 payment of claims against the property or expenses of its
2 administration, allowed by any court having jurisdiction thereof, shall
3 be divested of the lien. Liens created under this subsection shall be
4 qualified as follows:

5 (a) Any part of the property subject to the tax which is sold to a
6 bona fide purchaser shall be divested of the lien and the lien shall be
7 transferred to the proceeds of the sale; and

8 (b) The lien shall be subordinate to any mortgage or deed of trust
9 on the property pursuant to an order of court for payment of claims
10 against the property or expenses of administration. The lien shall
11 attach to any proceeds from the sale of the property in excess of the
12 obligations secured by the mortgage or deed of trust and the expenses
13 of sale, including a reasonable charge by the trustee and by his or her
14 attorney where the property has been sold by a nonjudicial trustee's
15 sale pursuant to chapter 61.24 RCW, and including court costs and any
16 attorneys' fees awarded by the superior court of the county in which
17 the property is sold at sheriff's sale pursuant to a judicial
18 foreclosure of the mortgage or deed of trust.

19 (2) If the person required to file the ((federal)) Washington
20 return under RCW 83.100.050 has obtained an extension of time for
21 payment of the ((federal)) tax or has elected to pay such tax in
22 installments, the tax lien under this section shall be extended as
23 necessary to prevent its expiration prior to twelve months following
24 the expiration of any such extension or the installment.

25 (3) The tax lien shall be extended as necessary to prevent its
26 expiration prior to twelve months following the conclusion of
27 litigation of any question affecting the determination of the amount of
28 tax due if a lis pendens has been filed with the auditor of the county
29 in which the property is located.

30 **Sec. 10.** RCW 83.100.130 and 1997 c 157 s 6 are each amended to
31 read as follows:

32 (1) ((Whenever)) If, upon receipt of an application by a taxpayer
33 for a refund, or upon examination of the returns or records of any
34 taxpayer, the department determines that within the statutory period
35 for assessment of taxes, penalties, or interest prescribed by section
36 14 of this act a person required to file the ((federal)) Washington
37 return under RCW 83.100.050 has overpaid the tax due under this

chapter, the department shall refund the amount of the overpayment, together with interest ~~((at the then existing rate under RCW 83.100.070(1)))~~ as provided in subsection (2) of this section. If the application for refund, with supporting documents, is filed within ~~((four months))~~ one hundred twenty days after an adjustment or final determination of federal tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after ~~((four months))~~ one hundred twenty days after the adjustment or final determination, the department shall pay interest only until the end of the ~~((four-month))~~ one hundred twenty-day period.

(2) Interest refunded under this section for periods before January 2, 1997, shall be computed at the rate provided in RCW 83.100.070(1). Interest refunded under this section for periods after January 1, 1997, through December 31, 1998, shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2) less one percentage point. Interest allowed for periods after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). Except as provided in subsection (1) of this section, interest shall be refunded from the date of overpayment until the date the refund is mailed. The rate so computed shall be adjusted on the first day of January of each year.

(3) Except as otherwise provided in subsection (4) of this section and RCW 83.100.090, no refund shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or an examination of records is complete.

(4) The execution of a written waiver under section 14 of this act shall extend the time for making a refund if, prior to the expiration of the waiver period, an application for refund is made by the taxpayer or the department discovers a refund is due.

(5) An application for refund shall be on a form prescribed by the department and shall contain any information and supporting documents the department requires.

Sec. 11. RCW 83.100.140 and 1988 c 64 s 13 are each amended to read as follows:

Any person required to file the ~~((federal))~~ Washington return who ~~((wilfully))~~ willfully fails to file a Washington return when required

1 by this chapter or who ((wilfully)) willfully files a false return
2 commits a gross misdemeanor as defined in Title 9A RCW and shall be
3 punished as provided in Title 9A RCW for the perpetration of a gross
4 misdemeanor.

5 **Sec. 12.** RCW 83.100.150 and 1988 c 64 s 14 are each amended to
6 read as follows:

7 ((+1)) The department may collect the estate tax imposed under RCW
8 ((83.100.030 and)) 83.100.040, including interest and penalties, and
9 shall represent this state in all matters pertaining to the same,
10 either before courts or in any other manner. At any time after the
11 Washington return is due, the department may file its findings
12 regarding the amount of the tax(~~(, the federal credit)~~) computed as
13 provided in RCW 83.100.040, the person required to file the ((federal))
14 Washington return under RCW 83.100.050, and all persons having an
15 interest in property subject to the tax with the clerk of the superior
16 court in the matter of the estate of the decedent or, if no probate or
17 administration proceedings have been commenced in any court of this
18 state, of the superior court for the county in which the decedent was
19 a resident, if the resident was a domiciliary, or, if the decedent was
20 a nondomiciliary, of any superior court which has jurisdiction over the
21 property. Such a court first acquiring jurisdiction shall retain
22 jurisdiction to the exclusion of every other court.

23 ~~((2) The department may collect the generation skipping transfer~~
24 ~~tax under RCW 83.100.045, including interest and penalties, and shall~~
25 ~~represent this state in all matters pertaining to the same, either~~
26 ~~before courts or in any other manner. At any time after the Washington~~
27 ~~return is due, the department may file its findings regarding the~~
28 ~~amount of the tax, the federal credit, the person required to file the~~
29 ~~federal return, and all persons having an interest in property subject~~
30 ~~to the tax with the clerk of the superior court in the matter of the~~
31 ~~trust or the estate of the decedent, if any, or, if no trust, probate~~
32 ~~or administration proceedings have been commenced in any court of this~~
33 ~~state, of any superior court which has jurisdiction over the property.~~
34 ~~Such a court first acquiring jurisdiction shall retain jurisdiction to~~
35 ~~the exclusion of every other court.))~~

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 83.100
2 RCW to read as follows:

3 (1) If the federal taxable estate on the federal return is
4 determined by making an election under section 2056 or 2056A of the
5 Internal Revenue Code, or if no federal return is required to be filed,
6 the department may provide by rule for a separate election on the
7 Washington return, consistent with section 2056 or 2056A of the
8 Internal Revenue Code, for the purpose of determining the amount of tax
9 due under this chapter. The election shall be binding on the estate
10 and the beneficiaries, consistent with the Internal Revenue Code. All
11 other elections or valuations on the Washington return shall be made in
12 a manner consistent with the federal return, if a federal return is
13 required, and such rules as the department may provide.

14 (2) Amounts deducted for federal income tax purposes under section
15 642(g) of the Internal Revenue Code of 1986, shall not be allowed as
16 deductions in computing the amount of tax due under this chapter.

17 NEW SECTION. **Sec. 14.** A new section is added to chapter 83.100
18 RCW to read as follows:

19 (1) If upon examination of any returns or from other information
20 obtained by the department it appears that a tax or penalty has been
21 paid less than that properly due, the department shall assess against
22 the taxpayer an additional amount found to be due and shall add
23 interest as provided in RCW 83.100.070 on the tax only. The department
24 shall notify the taxpayer by mail of the additional amount, and the
25 additional amount shall become due and shall be paid within thirty days
26 from the date of the notice, or within such further time as the
27 department may provide.

28 (2) Interest shall be computed from the original due date of the
29 Washington return until the due date of the notice. If payment in full
30 is not made by the due date of the notice, additional interest shall be
31 computed until the date of payment.

32 (3) No assessment or correction of an assessment for additional
33 taxes, penalties, or interest due may be made by the department more
34 than four years after the close of the calendar year in which a
35 Washington return is due under this chapter, including any extension of
36 time for filing, except upon a showing of fraud or of misrepresentation

1 of a material fact by the taxpayer or as provided under subsection (4)
2 or (5) of this section or as otherwise provided in this chapter.

3 (4) For persons liable for tax under RCW 83.100.120, the period for
4 assessment or correction of an assessment shall extend an additional
5 three years beyond the period described in subsection (3) of this
6 section.

7 (5) A taxpayer may extend the periods of limitation under
8 subsection (3) or (4) of this section by executing a written waiver.
9 The execution of the waiver shall also extend the period for making a
10 refund as provided in RCW 83.100.130.

11 **Sec. 15.** RCW 83.100.210 and 1996 c 149 s 18 are each amended to
12 read as follows:

13 (1) The following provisions of chapter 82.32 RCW have full force
14 and application with respect to the taxes imposed under this chapter
15 unless the context clearly requires otherwise: RCW 82.32.110,
16 82.32.120, 82.32.130, 82.32.320, and 82.32.340. The definitions in
17 this chapter have full force and application with respect to the
18 application of chapter 82.32 RCW to this chapter unless the context
19 clearly requires otherwise.

20 (2) The department may enter into closing agreements as provided in
21 RCW 82.32.350 and 82.32.360.

22 **NEW SECTION. Sec. 16.** A new section is added to chapter 83.100
23 RCW to read as follows:

24 All receipts from taxes, penalties, interest, and fees collected
25 under this chapter must be deposited into the education legacy trust
26 account.

27 **NEW SECTION. Sec. 17.** The following acts or parts of acts are
28 each repealed:

29 (1) RCW 83.100.030 (Residents--Estate tax imposed--Credit for tax
30 paid other state) and 1988 c 64 s 3 & 1981 2nd ex.s. c 7 s 83.100.030;
31 and

32 (2) RCW 83.100.045 (Generation-skipping transfers--Tax imposed--
33 Credit for tax paid to another state) and 1988 c 64 s 5.

1 NEW SECTION. **Sec. 18.** The repealed sections in section 17 of this
2 act do not affect any existing right acquired or liability or
3 obligation incurred under the statutes repealed or under any rule or
4 order adopted under those statutes nor do they affect any proceeding
5 instituted under them.

6 **Sec. 19.** RCW 83.100.010 and 1988 c 64 s 1 are each amended to read
7 as follows:

8 This chapter may be cited as the "Estate and Transfer Tax Act ((of
9 1988))."

10 NEW SECTION. **Sec. 20.** This act applies prospectively only and not
11 retroactively. Sections 2 through 17 of this act apply only to estates
12 of decedents dying on or after the effective date of this section.

13 NEW SECTION. **Sec. 21.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and takes effect
20 immediately.

 Passed by the Senate April 19, 2005.

 Passed by the House April 22, 2005.

 Approved by the Governor May 17, 2005.

 Filed in Office of Secretary of State May 17, 2005.

Exhibit B

FINAL BILL REPORT

ESB 6096

C 516 L 05

Synopsis as Enacted

Brief Description: Generating revenue to fund education.

Sponsors: Senators Poulsen, Fraser and Prentice; by request of Governor Gregoire.

Senate Committee on Ways & Means

House Committee on Finance

Background: The federal government imposes a tax on the transfer of property at death. This tax is known as the federal estate tax. The federal Economic Growth and Tax Relief Reconciliation Act of 2001 phases out the federal estate tax by 2010. The act increased the threshold below which estates owed no tax, known as the applicable exclusion amount. For 2005, the applicable exclusion amount is \$1,500,000. The applicable exclusion amount gradually increases to \$3.5 million by 2009. The act also reduced the credit allowed for state taxes by 25 percent per year. There is no state credit beginning in 2005. All of these changes sunset beginning calendar year 2011.

In 1981, Initiative 402 repealed the state inheritance tax and replaced it with an estate tax equal to the amount allowed as a credit against the federal estate tax. This is commonly referred to as a "pick-up" tax. A pick-up tax is not an additional tax on the estate but merely shifts revenues from the federal government to the state.

When originally approved by the voters in 1981, Initiative 402 incorporated the federal Internal Revenue Code "as it is amended from time to time." Because the state is constitutionally prohibited from delegating its legislative authority to the federal government, the legislature amended Initiative 402 in 1990 to refer to the Internal Revenue Code "as it existed on June 7, 1990." This change made a conforming amendment necessary to incorporate future changes in the federal Internal Revenue Code. A conforming amendment was last made in 2001. Because the state tax is specifically tied to the federal law before the 2001 act, the state Department of Revenue continued to collect the state tax under the law as it existed before the 2001 federal act. In 2002, bills were introduced in the Legislature both to fully and partially conform to the federal changes in the federal estate tax. None of these bills passed.

On February 3, 2005, the state Supreme Court held that Washington has a "pick-up" estate tax based on current federal law and that the current state statute does not impose an independently operating Washington estate tax. Until the Legislature expressly creates a stand-alone tax, the tax remains a pick-up tax that must be fully reimbursed by the federal credit. In effect, this fully conformed Washington's estate tax to the changes in the federal tax made in 2001 and invalidates the state tax to the extent it exceeds the federal tax credit.

Under the 2001 code, a taxpayer could elect to deduct the value of qualified family-owned business interests (QFOBI) from the gross estate. The amount of the deduction cannot exceed

\$675,000, and the sum of the QFOBI deduction and the applicable exclusion amount cannot exceed \$1.3 million. The QFOBI was repealed beginning in 2004 when the applicable exclusion amount increased to \$1.5 million.

Real property may be valued at current use values if the real and personal property is at least 50 percent of the value of the estate, is being used as a farm or in a trade or business, and passes to a qualified heir. Total reduction cannot exceed \$750,000, adjusted for inflation. For 2005, the amount is \$870,000. A qualified heir is an ancestor, spouse, or a lineal descendent of the individual, spouse, or parent (i.e. siblings and their descendants), and spouses of these lineal descendants. Farming includes the planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.

The tax on residents with property in other states is reduced by the lesser of the amount of tax paid the other state or by an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in the other state and the denominator of which is the value of the decedent's gross estate. The tax on nonresidents is equal to the federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington and the denominator of which is the value of the decedent's gross estate.

In addition to the estate tax, the federal government imposes a tax on every generation-skipping transfer (GST). The general purpose of the GST tax is to prevent individuals from avoiding estate tax by making transfers of wealth that skip a generation. There is a lifetime exemption of \$1,000,000, indexed to inflation since 1999. For 2004, the exemption under the state tax was \$1,140,000. The tax is imposed at the maximum rate imposed under the estate tax, which is 55 percent under the 2001 federal law. A credit against the federal GST tax is authorized for state GST taxes up to 5 percent of the federal GST tax. The state of Washington imposes a tax on every generation-skipping transfer equal to the federal credit, if real or tangible personal property subject to the federal tax is located in this state or if the trust has its principal place of administration in this state at the time of the generation-skipping transfer.

Summary: An intent to create a stand-alone state estate tax that is not affected by changes in federal law after 2005 is stated. A tax on the transfer of property located in Washington at the time of death of the owner is imposed. The rates range from 10 percent to 19 percent of the Washington taxable estate. The Washington taxable estate is equal to the federal taxable estate, determined without regard to the repeal of the federal estate tax and the deduction for state estate taxes, less:

- 1) \$1.5 million for persons dying in 2005 and at \$2.0 million for persons dying in 2006 and thereafter.
- 2) The value of qualified farm property, including the value of any tangible personal property used primarily for farming purposes on the farm.

To be qualified farm property, 50 percent of the estate must be property used for farming, the decedent or decedent's family must have materially participated in the operation of the farm, and the property must pass to a family member. However, no requirement of continued use for farming is placed on the heirs, and special valuation need not be elected for federal purposes.

If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount tax otherwise due multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Qualified farm property is excluded from the numerator and denominator of the fraction, and intangible personal property of a resident is presumed to be located in Washington.

Administrative provisions are made to allow the Department of Revenue to administer the stand-alone estate tax.

The generation-skipping transfer tax is repealed.

The revenue generated from the tax is deposited into the education legacy trust account.

Votes on Final Passage:

Senate	25	21
House	50	48

Effective: May 17, 2005

Exhibit C

Department of Revenue Fiscal Note

Bill Number: 6096 E SB	Title: Education funding	Agency: 140-Department of Revenue
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND	FY 2006	FY 2007	2005-07	2007-09	2009-11
NEW-State	39,900,000	98,800,000	138,700,000	200,100,000	223,300,000
01 - Taxes 55 - Inheritance Tax					
Total \$	39,900,000	98,800,000	138,700,000	200,100,000	223,300,000

Estimated Expenditures from:

	FY 2006	FY 2007	2005-07	2007-09	2009-11
FTE Staff Years	0.1		0.1		
Fund					
GF-STATE-State 001-1	19,700		19,700		
Total \$	19,700		19,700		

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

Legislative Contact: Dean Carlson	Phone: (360)786-7305	Date: 04/20/2005
Agency Preparation: Kim Davis	Phone: 360-570-6087	Date: 04/29/2005
Agency Approval: Kim Davis	Phone: 360-570-6087	Date: 04/29/2005
OFM Review: Doug Jenkins	Phone: 360-902-0563	Date: 05/01/2005

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This fiscal note reflects ESB 6096.

Section 1 expresses the Legislature's intent to create a stand-alone Washington estate tax to provide funding for education.

Section 2 amends RCW 83.100.020 which provides definitions of terms used throughout chapter 83.100 RCW. The definition of "Internal Revenue Code" is revised to mean the Internal Revenue Code as of January 1, 2005. The definition of "generation skipping transfer" and references to this term are eliminated since this bill eliminates the generation skipping transfer tax. The definition of "federal credit" is also eliminated since the Washington estate tax will no longer be based on the federal credit allowed for state estate taxes after the effective date of this bill. The definition of "transfer" is revised to clarify that a transfer does not include disposing of farm property, or ceasing to use the farm property for farming purposes, by a qualified heir (i.e., a member of the decedent's family who acquired the farm property or to whom the farm property passed). Also, the terms "taxpayer," "Washington taxable estate," and "federal taxable estate" are added.

"Washington taxable estate" is defined as the federal taxable estate, less: (a) \$1.5 million for decedents dying before January 1, 2006; and (b) \$2 million for decedents dying on or after January 1, 2006; and (c) the amount of any deduction allowed for farm property under Section 4 of this bill.

"Federal taxable estate" is defined as the taxable estate as determined for federal estate tax purposes without regard for: (a) the termination of the federal estate tax; and (b) the deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the Internal Revenue Code.

Section 3 amends RCW 83.100.040 to impose a state estate tax on every transfer of property located in Washington. The tax is based on the Washington taxable estate. Subsection (2) provides a rate table. If any property in the decedent's estate is located outside of Washington, the amount of tax is determined by multiplying the amount determined under the rate table by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator is the value of the decedent's gross estate. Property qualifying for the farm deduction under Section 4 of this bill is excluded from the numerator and denominator of the fraction. Subsection (3) explains that the tax imposed under this section is a stand-alone estate tax incorporating only those provisions of the 2005 Internal Revenue Code that do not conflict with the provisions of chapter 83.100 RCW. The tax is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax.

Section 4 is a new section added to chapter 83.100 RCW to allow a deduction in computing the Washington taxable estate for the value of real and tangible personal property used in farming, whether or not the farm property is located in or out of this state. Qualification for the deduction is determined using the federal standards for special valuation of farm property. This means, among other things, that 50 percent of the estate must be property used for farming, that the decedent or decedent's family must have materially participated in the operation of the farm, and that the property must pass to a family member. However, no requirement of continued use for farming is placed on the heirs, and special valuation need not be elected for federal estate tax purposes. Farm property held by an entity can qualify if the federal standards for being a closely held business, in addition to the other requirements for the deduction, are met.

Section 5 amends RCW 83.100.050 which establishes the due dates and filing requirements for the state estate tax. A Washington estate tax return must be filed if: (a) a federal estate tax return is required to be filed; or (b) for decedents dying prior to January 1, 2006, the gross estate exceeds \$1.5 million; or (c) for decedents dying on or after January 1, 2006, the gross estate exceeds \$2 million. A person required to file a federal estate tax return must file a Washington return by the due date of the federal return, including any extension of the time for filing the federal return. If no federal estate tax return is required to be filed, a taxpayer must file a Washington estate tax return by the due date that a federal estate tax return would have had to be filed, including any extension allowed by rule of the Department of Revenue.

Section 6 amends RCW 83.100.060 which allows for payment extensions and installments. If a person has obtained an extension of time to file their federal estate tax or has elected to pay the tax in installments, that person may elect to pay their Washington estate tax within the same time period and in the same manner as provided for payment of the federal tax. A person who is required to file a Washington estate tax return, but is not required to file a federal estate tax return, may obtain an extension of time for payment of the Washington tax or elect to pay such tax in installments as provided by rule of the Department of Revenue. The periods of limitation for refunds and assessments in RCW 83.100.130 and Section 14 of this bill are extended an additional three years beyond the due date of the last scheduled installment payment authorized under this section.

Section 7 amends RCW 83.100.070 which imposes penalties and interest when returns are not filed and taxes are not paid when due. References to the "federal" return are replaced with references to the "Washington" return. The section also provides that no penalty will be assessed if the person voluntarily files before being notified by the Department of Revenue that the person has not filed a Washington estate tax return.

Section 8 amends RCW 83.100.090 which requires that a person who files an amended federal estate tax return changing the decedent's gross estate must immediately file an amended Washington estate tax return. Also, a person must notify the Department of Revenue in writing within 120 days (currently 60 days) of any adjustment in, or final determination of, the amount of federal estate tax due. These requirements are not affected by the limitation periods in Section 14 of this bill and RCW 83.100.130 (Section 10 of this bill). This section allows for assessments or refunds when there is a change in state estate tax liability as a result of an adjustment in, or final determination of, the amount of federal estate tax outside of the period of limitations in Section 14 of this bill and RCW 83.100.130.

Section 9 amends RCW 83.100.110 regarding tax liens by removing a reference to generation skipping transfer" and by replacing a reference to the "federal" return with "Washington" return.

Section 10 amends RCW 83.100.130, which addresses refunds for overpayment of the tax, by replacing references to the "federal" return with the "Washington" return. The statute is also amended to apply the limitation period for assessments in Section 14 of this act to the refunds allowed under this section.

Section 11 amends RCW 83.100.140, which provides for criminal penalties for willfully failing to file a Washington return, by replacing references to the "federal" return with the "Washington" return.

Section 12 amends RCW 83.100.150 regarding collection of the tax by removing references to repealed sections and the generation skipping transfer tax.

Section 13 adds a new section to chapter 83.100 RCW providing for treatment of certain adjustments to estate value such as bequests to spouses, domestic trusts, and certain deductions. Section 13 essentially requires consistency between the Washington and federal estate tax returns with respect to deductions, valuations, and elections, except with respect to marital deductions. The ability to take a marital deduction in an amount differing from the federal return allows for the preservation of standard estate planning techniques for those years (beginning in 2009) where the exclusion amount will be different between the state and federal estate tax returns.

Section 14 adds a new section to chapter 83.100 RCW to provide a limitation period on assessments. The Department of Revenue may not make any assessment of additional taxes, penalties, or interest more than four years after the close of the calendar year in which a Washington estate tax return is due, including any extension of time for filing, except if there is fraud or misrepresentation of a material fact by the taxpayer. This limitation period can be extended by a taxpayer.

Section 15 amends RCW 83.100.210 providing for the application of certain general administrative provisions of chapter 82.32 RCW to the state estate tax imposed in chapter 83.100 RCW.

Section 16 adds a new section to chapter 83.100 RCW requiring that all receipts from taxes, penalties, interest, and fees collected under this chapter must be deposited into the education legacy trust account.

Section 17 repeals RCW 83.100.030, which imposes the current "pick-up" state estate tax on residents. This section also repeals RCW 83.100.045 regarding the tax imposed on generation skipping transfers.

Section 18 provides a savings clause so that the Department of Revenue will be able to collect any outstanding Washington estate tax imposed under RCW 83.100.030 and generation skipping transfer tax imposed under RCW 83.100.045 prior to the effective date of this act.

Section 19 amends RCW 83.100.010 which provides a short title for chapter 83.100 RCW -- "Estate and Transfer Tax Act of 1988." The reference to 1988 is deleted.

Section 20 provides that this bill only applies prospectively to estates of decedents dying on or after the effective date of this bill.

Section 21 provides a severability clause.

Section 22 provides an emergency clause and an immediate effective date.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

ESTATE TAX ASSUMPTIONS/DATA SOURCES

On February 3, 2005, the Washington State Supreme Court decided in *Estate of Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate tax is tied to the current federal Internal Revenue Code. As a result, the state's estate tax was eliminated for all deaths occurring from January 1, 2005 through December 31, 2010. In 2011 the federal estate tax filing threshold drops back to \$1 million, and states may again collect 100 percent of the allowable state estate tax credit.

This bill creates a stand-alone estate tax with a \$1.5 million filing threshold for decedents dying before January 1, 2006. The filing threshold increases to \$2 million for decedents dying on or after January 1, 2006. The estate tax collections will be deposited into the new education legacy trust account.

The estimated tax due under this bill was compared with the amount expected under current law to arrive at the estimated impact of the legislation. Then, the calendar year tax impacts were divided up into months and lagged by nine months to reflect the due date for filing estate tax returns for typical estates. The results were then aggregated on the basis of state fiscal years.

- 1) The assumed effective date of the estate tax is May 15, 2005.
- 2) Estimates are based on the Forecast Council's November 2004 forecast.
- 3) The estate tax model uses all returns filed to date for CY 2003 deaths.
- 4) Payment of estate tax is due nine months after date of death.
 - Assumed all payments are made at the nine-month due date.
 - First payments would be due February 15, 2006 (FY06).
- 5) This bill will allow the estate tax to be collected on Washington assets only.
- 6) The source of farm asset data is the federal estate tax return data for estates of decedents dying in 1998. This data is broken down by type of property, one of which is farm assets categorized by size of gross estate. This data includes the number of estates filing in each category, the value of the gross estates, and the value of the farm assets. For the purposes

of the estimate, the following is assumed:

- Assumed 100 percent of the farm assets would qualify for the deduction.
- All farm assets means farmland and tangible personal property used primarily in farming.

7) The Washington estate tax is calculated using the Washington taxable estate. The "Washington taxable estate" means the federal taxable estate, less (1) \$1.5 million for deaths occurring in 2005, and \$2 million for deaths occurring in 2006 and after; and (2) the amount of any farm or tangible personal property used primarily for farming purposes that qualifies for the farm deduction. A new Washington estate tax table rate is applied to the Washington taxable estate.

8) The Internal Revenue Code is incorporated into the Washington stand-alone estate tax as amended or renumbered as of January 1, 2005.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

FY 2006 -	\$ 39,900
FY 2007 -	\$ 98,800
FY 2008 -	\$ 97,700
FY 2009 -	\$102,400
FY 2010 -	\$108,000
FY 2011 -	\$115,300

Local Government, if applicable (cash basis, \$000): None

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

To implement this legislation, the Department will use existing staff resources. Assuming a May 15, 2005 effective date, the Department will incur costs of approximately \$23,200 in the current FY 2005 to adopt three emergency rules and repeal one administrative rule in chapter 458-57 WAC.

The Department will also incur costs in FY 2006 of approximately \$19,700 to adopt two new rules in chapter 458-57 WAC. This represents staff time, printing, and postage.

The Department will incur no further costs in the remaining fiscal years to administer the estate tax program.

The Department will absorb these costs. However, should this bill and other similar bills pass, the net impact may result in costs above the level the Department can reasonably absorb. In that event, the Department will need additional resources to implement the legislation.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2006	FY 2007	2005-07	2007-09	2009-11
FTE Staff Years	0.1		0.1		
A-	8,100		8,100		
B-	2,000		2,000		
E-	8,600		8,600		
J-	1,000		1,000		
Total \$	\$19,700		\$19,700		

III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2006	FY 2007	2005-07	2007-09	2009-11
HEARINGS SCHEDULER	31,032	0.0		0.0		
RULES MANAGER	69,500	0.0		0.0		
RULES POLICY SPECIALIST	68,600	0.0		0.0		
TAX POLICY SPECIALIST 2	51,864	0.0		0.0		
TAX POLICY SPECIALIST 3	58,656	0.1		0.1		
Total FTE's		0.1		0.1		

Part IV: Capital Budget Impact

NONE.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the Department will use the emergency process in the current FY 2005 to amend three rules relating to estate tax in chapter 458-57 WAC. The Department will also repeal one rule.

In FY 2006, the Department would use the standard process to adopt two new rules relating to estate tax. Persons affected include taxable estates of decedents, individuals with a net worth large enough to have a taxable estate upon their death, and estate tax practitioners.